

Decision 03-05-023 May 8, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of

ADVANCED TELCOM, INC. dba ADVANCED
TELCOM GROUP, aka DELAWARE
ADVANCED TELCOM, INC.

AND

GE BUSINESS PRODUCTIVITY SOLUTIONS,
INC.

For Expedited Approval of (i) the Transfer of
Certain Assets and Customers of Advanced
TelCom, Inc. to GE Business Productivity
Solutions, Inc.; (ii) the Transfer of the Existing
Telecommunications Authority of Advanced
TelCom, Inc. to GE Business Productivity
Solutions, Inc.; and (iii) the Discontinuance of
Telecommunications Service by Advanced
TelCom, Inc. in the State of California.

Application 02-07-036
(Filed July 16, 2002)

OPINION MODIFYING DECISION 02-10-049

Summary

This decision grants the Petition for Modification of (D.) 02-10-049 filed January 30, 2003 by Applicants, Advanced TelCom, Inc. (U-6083-C), d/b/a Advanced TelCom Group (ATG), a/k/a Delaware Advanced TelCom, Inc., and GE Business Productivity Solutions, Inc. (U-5334-C), (GEBPS) pursuant to Rule 47 of the Commission's Rules of Practice and Procedure, to make certain

specified changes. The transaction is structured to take effect upon completion of the Chapter 11 bankruptcy proceeding of ATG's parent, Advanced TelCom Group, Inc.'s (ATGI). The application is unopposed. The application is granted.

Background

ATG is a Delaware Corporation, headquartered at 19 Old Courthouse Square, Santa Rosa, California. It was authorized to provide interexchange telecommunications services in California in D.98-11-032 on November 9, 1998, and authorized to provide local exchange service in D.99-02-004, February 2, 1999. It also is authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant carrier.

ATG currently provides both local exchange and interexchange telecommunications services through the use of its own facilities. GEBPS is presently authorized to provide resold interexchange telecommunications in the State of California. GEBPS was granted its CPCN by D.93-10-022 on October 6, 1993 when it was first known as GE Capital Communications Service Corp.

GEBPS is a wholly owned subsidiary of General Electric Capital Corporation, which in turn is a wholly owned subsidiary of General Electric Capital Services, Inc., which in turn is a wholly owned subsidiary of General Electric Company, (GE). GE, a publicly held New York corporation, is one of the largest and most diversified industrial corporations in the world. GEBPS is authorized to provide, and currently is providing, resold long distance telecommunications services to business and residential customers in the State of California, and in every state in the United States except Alaska. GEBPS is also

authorized by the Federal Communications Commission to provide international switched telecommunications services on a resold basis.

In this application, Applicants requested that the Commission grant them the authority to consummate a transaction arising out of the Chapter 11 bankruptcy proceeding of ATG's parent, ATET that compels ATG to transfer certain of its telecommunications assets in the State of California and attendant customer base to GEBPS without interruption of service. The actual date for the transfer of ATG's current customers to GEBPS and the discontinuance of service by ATG could not be determined at the time the application was filed (July 16, 2002). Applicants sought expedited approval of a transfer of certain specified ATG assets, ATG's customers in Santa Rosa, Petaluma, Rohnert Park, Cotati and adjacent unincorporated areas and ATG's Certificates of Public Convenience and Necessity (CPCNs), to GEBPS, and the withdrawal of ATG from providing telecommunications services in those affected service areas.

Since GEBPS was authorized to provide only resold interexchange telecommunications in the State of California, it must obtain the existing authorizations of ATG to provide service to ATG's existing customers. Accordingly, Applicants requested authority to transfer to GEBPS certain of the assets and customers of ATG, including the CPCNs currently held by ATG, to provide the services currently provided by ATG. Because GEBPS was acquiring the assets of ATG, and not its stock, upon completion of the transaction. ATG no longer would provide telecommunications services in the affected service areas. Accordingly, ATG requested authority to discontinue the provision of telecommunications services in the affected ATG service areas upon the transfer of certain of its assets and customer base to GEBPS. D.02-10-049, dated October 24, 2002 approved Applicants' joint application (the Original Plan).

Necessity for the Petition for Modification

Applicants state that the following changed circumstances dictated the filing of the petition for modifications:

1. Following the issuance of D.02-10-049, there have been further discussions between General Electric Capital Corporation (GECC), the parent company of GEBPS, and ATG and ATG's parent corporation, ATGI which is in Chapter 11 bankruptcy proceedings before the U.S. Bankruptcy Court for the Northern District of California, Santa Rosa Division (the Bankruptcy Court). These discussions have explored whether a differently structured transaction might be mutually beneficial to the parties (the New Plan). As a result of these discussions, the parties have entered into a memorandum of understanding which, if concluded, would result in closing on the New Plan in or about May, 2003.
2. Under the New Plan, for which approval was requested from the Bankruptcy Court on January 21, 2003, ATGI would cancel all of its existing capital stock, both common and preferred, and a different GECC subsidiary, VFS Financing Inc., would receive all of the newly issued ATGI voting common stock in exchange for and satisfaction of GECC's existing senior secured debt claims against ATGI. GEBPS would purchase all of a newly designated series of ATGI's non-voting, non-convertible and non-participating preferred stock. If consummated, the New Plan would result in a purchase price of ATGI, which would be beneficial to the creditors of ATGI. Consummation of the New Plan would not jeopardize customers of ATG nor require a transfer of their accounts to GEBPS since ATG would survive as an entity and remain in business as a wholly owned subsidiary of the reorganized ATGI. Due to the survival of ATG as an entity under the New Plan, the customers would remain customers of ATG, and ATG would not seek a discontinuance of its authority.

3. From a customer perspective, under the New Plan, the substance of the transaction remains essentially the same as under the Original Plan. A GECC subsidiary will provide service to the customers after closing, under either the Original Plan or the New Plan; only the identity of the entity will be different. Under the New Plan, it will be ATG instead of GEBPS.
4. Interim incremental funding for ATG's operations is being provided by GEBPS, and therefore there will be no jeopardy to customers from the additional time necessary for the New Plan to close. If the New Plan closes, ATG proposes to notify customers of the New Plan by a bill insert or other mailing no later than the first billing cycle after closing.
5. The closing of the New Plan is contingent upon parties fulfilling certain conditions in a timely manner. The parties are confident that all such outstanding conditions will be satisfied. However, there remain the prospect that, for a variety of reasons, the parties may not conclude the New Plan, in which case it will be necessary to close on the original transaction. For this reason, the parties wish to retain the Commission's approval of the asset transfer plan, granted by D.02-10-049, and to have the latitude to close on either version of the plan, with formal notification to the Commission as to which version immediately upon closing.
6. VFS did not participate in this proceeding earlier because under the Original Plan, VFS would not receive control of ATG. It is only under the New Plan that VFS obtains an interest in this proceeding, which interest was not known before the issuance of D.02-10-049.

Discussion

The proposed transfer of control as detailed in the Petition for Modification (New Plan) and in the original application (Original Plan) promises improved services for California consumers. No changes in the existing services

of ATG are proposed. Management personnel will be the same under the Original Plan or the New Plan. Customers will be notified of the New Plan if the New Plan closes. Customers were already notified of the changes proposed in the Original Plan.

We authorize Applicants' request to consummate either of the proposed transactions.

Notice of the filing of this petition for modification appeared in the Commission's Daily Calendar on January 31, 2003. There are no protests. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3092.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Dean J. Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On May 2, 2002, ATGI filed a voluntary petition for protection under Chapter 11 of the U. S. Bankruptcy Code.
2. On or about August 23, 2002, ATG advised its California customers by letter that it would be seeking regulatory authorization to transfer its accounts and services to GE Business Productivity Solutions, Inc (GEBPS).
3. Notice of this petition for modification appeared in the Daily Calendar on January 31, 2003.

4. GEBPS meets the technical and financial requirements for a new local exchange entrant. Existing customers of ATG should see no disruption of service under either the Original Plan or the New Plan.

5. There will be no change in current service or rates provided by GEBPS under the Original Plan or by ATG under the New Plan as result of this transaction.

6. The proposed change in control is in the public interest as customers of GEBPS under the Original Plan or ATG under the New Plan will avoid the risk of disruption of service.

7. VFS Financing, Inc., is another subsidiary of GECC.

8. No new construction is being proposed.

9. No protests or responses have been filed to this application.

Conclusions of Law

1. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

2. The application should be granted. The transfer of control approved as provided in the Original Plan or in the New Plan is in the public interest.

3. VFS should be added to this proceeding as a party pursuant to Rule 47(e).

O R D E R

IT IS ORDERED that:

1. Advanced TelCom Inc., d/b/a Advanced TelCom Group, (ATG) a/k/a Delaware Advanced TelCom, Inc. and GE Business Productivity Solutions, Inc. (GEBPS) and VFS (collectively, Applicants) are authorized pursuant to Pub. Util. Code §§ 851-854 to enter into either the Original Plan transaction, as more fully described in the application and its exhibits, by which GEBPS, will acquire

certain assets of ATG in the State of California, including the certificate of public convenience and necessity presently held by ATG or under the New Plan in which VFS will acquire the stock of ATGI, and, indirectly, ATG and the same described assets.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, including which version of the transaction was consummated, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. VFS shall be added to this proceeding as a party.

4. If the New Plan becomes effective, customers shall be notified by a bill insert or other mailing no later than the first billing cycle after closing.

5. GEBPS and ATG shall make all books and records available for review and inspection upon Commission staff request.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

7. Application 02-07-036 is closed.

This order is effective today.

Dated May 8, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners